

### Remarks

Claims 1, 4-27, 29, and 31-38 are pending in the application and stand rejected. Claim 4 has been amended to correct the dependency of that claim.

Applicant submits that no new matter has been added by the present Amendment. Applicant specifically reserves the right to pursue the subject matter of the canceled or amended claims in a related application; the present Amendment is introduced for the sole purpose of furthering prosecution. Applicant respectfully requests reexamination and reconsideration of the case in light of the present Amendments and the following remarks. Each of the rejections levied in the Office Action is addressed individually below.

#### Rejection under 35 U.S.C. § 112 as Being Indefinite

Claims 4-10 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner states that claim 4 depends from a canceled claim, thus the claim and its dependents are rendered vague and indefinite. Applicant has amended claim 4 to depend from claim 1, and therefore, respectfully requests that the rejection be removed.

#### Rejection for Lack of Novelty

Claims 1, 4-27, 29, and 31-38 are rejected under 35 U.S.C. § 102(a) and (e) as being anticipated by Boyce *et al.* (U.S. Patent Application 2002/0035401). The Examiner states that Boyce *et al.* teaches a composite osteoimplant comprising bone-derived particles and polymers, wherein the composite is formable during or just prior to implantation. The Examiner states that Boyce *et al.* anticipates claims 1, 4-27, 29, and 31-38.

To the extent that this rejection may be applicable to the presently pending claims, it is obviated by the enclosed Declaration under 37 C.F.R. § 1.132, which clearly sets out that the alleged anticipatory material in Boyce *et al.* was not invented by another. Applicant, therefore, respectfully requests that the rejection be removed.

### Double Patenting

Claims 1-38 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-83 of co-pending U.S. patent application serial number 10/681,651 and over claims 51-116 of co-pending U.S. patent application serial number 10/639,912. Applicant respectfully defers further comment on this rejection until the claims of either application have been found to be patentable.

Applicant, therefore, respectfully submits that the present case is in condition for allowance. A Notice to that effect is respectfully requested.

If, at any time, it appears that a phone discussion would be helpful, the undersigned would greatly appreciate the opportunity to discuss such issues at the Examiner's convenience. The undersigned can be contacted at (617) 248-5215.

Please charge any fees that may be required for the processing of this Response, or credit any overpayments, to our Deposit Account No. 03-1721.

Respectfully submitted,

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